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No. 775

# In the Supreme Court of the United States

OCTOBER TERM, 1958

AGOSTINO EDOTE ORLANDO, PETITIONER

v.

ROBERT H. ROBINSON, DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

## BRIEF FOR THE RESPONDENT IN OPPOSITION

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| Immigration and Nationality Act of 1952, 66 Stat. 163: | |
| § 101(f), 8 U.S.C. 1101(f) | 2, 7, 8 |
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## BRIEF FOR THE RESPONDENT IN OPPOSITION

### OPINION BELOW

The opinion of the court of appeals (Pet. 1a–3a) is reported at 262 F. 2d 850.

### JURISDICTION

The judgment of the court of appeals was entered on January 5, 1959 (Pet. 4a), and a petition for rehearing was denied on February 10, 1959 (Pet. 5a). The petition for a writ of certiorari was filed on March 16, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### QUESTION PRESENTED

Whether petitioner was properly found ineligible for suspension of deportation where he failed to prove

that he was a person of good moral character as required by § 244(a)(5) of the Immigration and Nationality Act of 1952 and where, on the hearing, evidence was introduced to show that he had deliberately misstated facts concerning prior arrests on three official forms filed by him under the immigration and naturalization laws.

## STATUTES INVOLVED

Section 101(f) of the Immigration and Nationality Act of 1952, 66 Stat. 166, 8 U.S.C. 1101(f), provides in pertinent part:

> For purposes of this Act—
>
> No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—
>
> * * * * *
>
> (6) one who has given false testimony for the purpose of obtaining any benefits under this Act;
>
> * * * * *
>
> The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

Section 244(a) of that Act, 66 Stat. 214, 8 U.S.C. 1254(a), provides in pertinent part:

> As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—
>
> * * * * *

(5) is deportable under paragraphs (4), (5), (6), (7), (11), (12), (14), (15), (16), (17) or (18) of section 241(a) for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States within two years prior to, or at any time after June 27, 1952, is deportable under paragraph (2) of section 241(a) as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence.

## STATEMENT

The petitioner seeks review of a judgment of the Court of Appeals for the Seventh Circuit affirming the judgment of the District Court for the Northern District of Illinois which dismissed petitioner's declaratory action to set aside the order of the Immigration and Naturalization Service ordering him deported and declaring him ineligible for the dis-

cretionary relief of suspension of deportation. The relevant facts may be summarized as follows:

1. Petitioner, a citizen of Italy, came to this country as a seaman on April 16, 1918, landing at Philadelphia, Pennsylvania (PA. 14, 30).[1] He remained in this country, making occasional voyages as a member of the Army Transport Service and the Merchant Marine (PA. 18). On January 18, 1929, he was convicted in California of the offense of wilfully and unlawfully stealing the personal property of another, was sentenced to pay a fine of $15, and was given a suspended sentence of 30 days' imprisonment; on December 3, 1930, he was convicted in Illinois of contributing to the delinquency of a 12-year-old girl and was placed on probation for a year; on November 2, 1938, he was convicted of a similar offense involving a 3-year-old girl and was sentenced to six months in the House of Correction in Chicago, Illinois; and on May 28, 1943, he was convicted of a similar offense involving a 6-year-old girl and was fined $25 and costs (PA. 45–46; RA. 22–37).

On November 9, 1940, when registering as an alien, petitioner stated on the registration form (Ex. 22; PA. 48), "I have not been arrested or indicted for, or convicted of any offense (or offenses)." On July 15, 1947, when applying for a record of lawful entry for permanent residence (which was subsequently granted) he stated in regard to his prior arrests and convictions (Ex. 24; PA. 49, 52):

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[1] "PA." refers to petitioner's (appellant's) appendix in the court of appeals; "RA.", to respondent's.

On December 22, 1928, at Pasadena, California, picked up on suspicion—discharged.
On October 24, 1938, at Chicago, Illinois, arrested for drunkenness and placed on probation for 6 months.
On or about December 3, 1930, sentenced to 6 months in House of Correction for contributing to delinquency of a minor.
No other arrests.

On ~~September 1~~ July 12, 1948, in an Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization, petitioner stated in respect to his prior arrests (Ex. 25, RA. 38, 39):

> Yes, I was arrested in 1938
> drunk, fined, placed on probation and discharged from probation. Reported at Criminal Court Building. Charged with delinquency of minor. No other arrest.

On January 12, 1954, petitioner withdrew his prior petition (Exs. 26, 27; PA. 55–57) and filed another preliminary petition (Ex. 28). In describing his 1943 arrest on this form he omitted a description of the offense for which he was arrested and convicted, merely citing the $25.00 fine. On the basis of this form he later filed a petition (Ex. 29) which is still pending (PA. 25).

2. On March 9, 1955, a warrant of arrest was served on petitioner charging that he was deportable under § 241(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(4)) on the basis of his conviction after entry of two crimes involving moral turpitude (PA. 18; RA. 11–14). On April 22, 1955, a depor-

tation hearing was conducted before a Special Inquiry Officer of the Immigration and Naturalization Service (PA. 27–38; RA. 1–6). Petitioner, who was represented by counsel, admitted his three convictions for contributing to the delinquency of female minors in Illinois and the conviction for theft in California (PA. 30–31). The Special Inquiry Officer then continued the proceedings to afford petitioner's counsel an opportunity to apply for suspension of deportation (RA. 6).

When the hearing was reconvened on May 24, 1955, petitioner filed with the Special Inquiry Officer an application for suspension of deportation (RA. 9–10). Documents evidencing petitioner's four convictions were admitted into evidence (RA. 4, 7–9), as were the various documents in which he had made statements concerning prior arrests (PA. 35–38; RA. 10). Petitioner acknowledged the errors in his description of the arrests disclosed on his 1947 application for registry and stated that he had forgotten the omitted 1943 arrest (PA. 37–38). At a subsequent session on June 24, 1955, petitioner admitted that he had withdrawn his first petition for naturalization on January 11, 1954, because of inaccuracies in his statements in the petition (PA. 39–40).

On August 30, 1955, the Special Inquiry Officer denied petitioner's application for suspension of deportation and ordered him deported on the basis of his conviction of two crimes involving moral turpitude, to wit, the January 18, 1929, conviction for theft in California, and the May 1943, conviction in Illinois of contributing to the delinquency of a child under

circumstances involving moral turpitude (PA. 18–27). Petitioner appealed to the Board of Immigration Appeals, challenging only the denial of discretionary relief (PA. 13–17). On January 6, 1956, the Board dismissed petitioner's appeal, holding that his false statements as to his arrest record, his consistent effort to conceal that record, and his failure otherwise to establish affirmatively his good moral character during the ten-year period preceding his application supported the ruling that he was ineligible for suspension of deportation under the provisions of § 244 (a)(5) of the Immigration and Nationality Act (PA. 17). Thereafter petitioner instituted the present action for declaratory relief in the district court, attacking only the order denying him suspension of deportation (PA. 2–13).

## ARGUMENT

Petitioner contends that the record fails to establish that he is ineligible for suspension of deportation as "one who has given false testimony for the purpose of obtaining any benefits" under the Act within the meaning of § 101(f)(6), *supra*, p. 2. His position seems to be that, while the Immigration and Naturalization Service found that he made false statements in the three forms with an intent to conceal the true facts from the government and that his explanation on the hearing was "evasive and not credible" (PA. 26), it failed to make a specific finding that the false statements were for purposes of obtaining benefits under the Act. His argument, addressed to the formal sufficiency of the findings of the Service, is without merit.

The findings both of the hearing officer (PA. 26–27) and the Board of Immigration Appeals (PA. 25–26) were not based specifically on § 101(f)(6), but on a broader finding that petitioner had not affirmatively established that he was a person of good moral character during the ten-year statutory period, as required by § 244(a)(5) of the Act, *supra*, pp. 2–3. This lack of showing of good moral character under § 244(a)(5) was supplemented by the showing that petitioner deliberately falsified information in various forms in order to conceal the truth from authorities and that his testimony on the hearing in respect thereto was evasive and not credible. Since petitioner makes no showing that on this record that finding was an abuse of discretion, the issue of whether he was also ineligible by virtue of § 101(f)(6) alone is academic. That latter subsection in fact specifically provides:

> The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.[2]

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[2] Petitioner also contends that, while the Immigration Service and the district court sustained the denial of suspension on the basis of the entire record, the court of appeals based its opinion on one part of the evidence, namely, petitioner's false statements made in connection with his petition for naturalization on July 12, 1948. Since this last application was the one within the ten-year period before the hearing in 1955, the court properly put more emphasis on it than the others, but the affirmance was on the basis of the whole administrative record.

## CONCLUSION

For the foregoing reasons we respectfully submit that the petition for a writ of certiorari should be denied.

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